

Remarks

Claims 6-18 are in the case. Claims 1-5 have been cancelled. Claim 16 has been allowed. Applicant appreciates the withdrawal of the restriction requirement. The Examiner's rejections are traversed below.

Rejections under 35 USC §102(b)

Claims 6-8, 10-14, 17 and 18 have been rejected under 35 USC 102(b) as being anticipated by Zimmer et al. (U.S. 5,016,859).

①

Applicant respectfully submits that independent claims 6, 12, 17 and 18 are not anticipated by Zimmer et al. because the fabric tube (30) of Zimmer et al. is not "permanently enclosed." Anticipation under 35 USC 102(b) requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim. *Lindermann Maschinenfabrick GMBH v. American Hoist and Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984); MPEP § 2131. In support of the showing of anticipation, the Examiner notes Zimmer et al. Col. 4, lines 54-64 as showing that the Zimmer et al. tube is permanently enclosed. However, one of the key features of the Zimmer invention is that the seam is specifically configured such that it can be pulled apart instantly simply by pulling fastener or member 38 to unleash the stitch. Col. 4, lines 64-68; Col. 5, lines 6-13; Col. 7, lines 4-23. The unique stitching arrangement that makes this frangible seam possible is shown in Figure 4. Two of the stated objects of the Zimmer invention are "4. to provide an apparatus and method for temporarily binding the individual electrical wires of the harness to the bundle in preparation for installation in one movement or process; 5. to unbind the temporary wrapping of the individual wires of the wiring harness following installation in one single movement or process." Col. 2, Lines 55-62.

The frangible seam is a necessary feature of Zimmer because removal of the sleeve "places the

harness in the condition as shown in Fig. 1 for its final connection to the electrical apparatus in the engine compartment.” Col. 5, 11-13; see also Col. 7, 19-23. The sleeve protects the wiring harness while the harness is being installed, Col. 6, Line 67 to Col. 7, Line 3, but it must then be removed (and readily removable) so that the individual wires of the wiring harness can be coupled to their appropriate circuits.

Zimmer never characterizes the frangible seam, along with its release tag (38) as optional or preferential, but instead consistently characterizes the seam as an integral part of the invention. Based on the specification of Zimmer, the seam of the Zimmer tube cannot fairly be characterized as “permanent” as claimed by applicant. Because Zimmer et al. does not disclose each and every element of the claimed invention, it is respectfully submitted that a prima facie case of anticipation under 35 USC 102(b) has not been established.

② Additionally, the prior art reference under 35 USC 102(b) must be enabling, thus placing the allegedly disclosed matter in the possession of the public. *Akzo N.V. v. U.S. Int’l Trade Comm’n*, 808 F.2d 1471, 1 USPQ.2d 1241, 1245 (Fed. Cir. 1986). An anticipating reference must describe the patented subject matter with sufficient clarity and detail to establish that the subject matter existed and that its existence was recognized by persons of ordinary skill in the field of the invention. *ATD Corp. v. Lydall, Inc.*, 159 F.3d 534, 48 USPQ.2d 1321, 1328 (Fed. Cir. 1998). The release tag (38) of Zimmer would mar its use as a potential electrical cord cover in decorative in-home or office settings, and more importantly would allow any curious passerby (e.g. a child) to unravel the tube merely by tugging the release tag (38) to break the unique frangible seam, rendering the item useless as a cord cover. In view of the foregoing unique seam of Zimmer, it is respectfully suggested that Zimmer does not enable the claimed invention.

Rejection of claims 4, 9 and 15 under 35 USC §103(a)

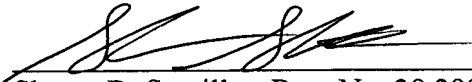
③ Claims 4, 9, and 15 have been rejected under 35 USC 103(a) as being obvious over Zimmer et al. Applicant respectfully suggests that a prima facie showing of obviousness as to claims 15-16 has not been established. For the foregoing reasons, Zimmer teaches away from an interior seam. It is clear that Zimmer contemplated only an exterior seam having a unique releasable stitch. As such, Zimmer does not suggest, teach or otherwise motivate an interior seam. There is no authority to suggest that such a seam would work with Zimmer, and therefore the proposed modification is not merely a rearrangement, but an alteration that disables the Zimmer reference.

④ Applicant has further elected to submit a Declaration Under 37 CFR § 1.132 in order to submit certain evidence that applicant respectfully suggests supports a finding of non-obviousness of the invention as claimed. Applicant suggests that the evidence set forth in her declaration establishes the commercial success of her invention, copying of the invention, a long felt need for the invention, and a failure of the prior art to achieve the solution provided by the invention.

Conclusion

For the foregoing reasons, applicant suggests claims 6-18 are now in a condition for allowance, and respectfully requests same. If any fees are due, the Commissioner is authorized to charge them against Deposit Account No. 50-0694.

Respectfully submitted,



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